



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2021-0915]**

**RIN 1625-AA00**

### **Safety Zones for Parallel Thimble Shoal Tunnel Project on the Chesapeake Bay**

#### **Bridge Tunnel; Chesapeake Bay, VA**

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish temporary safety zones for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters near the Chesapeake Bay Bridge Tunnel (CBBT), linking Southeastern Virginia to the Eastern Shore, during an already ongoing construction project on the CBBT. This proposed rulemaking would prohibit persons and vessels from operating within 500 feet of the construction area unless authorized by the Captain of the Port (COTP) Sector Virginia or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0915 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LCDR Ashley Holm, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: (757) 668-5581;  
Email: virginiawaterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CBBT	Chesapeake Bay Bridge Tunnel
CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Virginia
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

In December, 2021, the COTP was notified by project management for the Parallel Thimble Shoals Tunnel Project that construction work in vicinity of the CBBT's southern two islands, South Thimble Island and North Thimble Island, creates hazards to the maritime public and recommended the establishment of safety zones. Hazards include the operation of heavy machinery and loads suspended by cranes over the waters surrounding the islands and attached structures. Specifically, safety concerns were raised that involved kayakers and vessels fishing in the vicinity of the construction site despite posted signs indicating not to approach the site within 500 feet. The COTP has determined that potential hazards associated with the construction equipment used in this project creates a safety concern for those transiting within 500 feet of the project site. This construction project has been ongoing for 4 years, workers are present at all hours and the work is projected to continue for the next 5 years.

This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge tunnel is under construction.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish two temporary safety zones extending 500 feet in all directions from the edge of both South Thimble Island and North Thimble Island. These islands are located approximately 3.3 miles and 4.5 miles respectively, from the shores of Virginia Beach, Virginia, along Highway 13, and serve as the ends of what is commonly called the Chesapeake Bay Bridge [southern] Tunnel. The safety zones would be in effect until January 31, 2027. No vessel or person would be permitted to enter either of the safety zones without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on its minimal impact to the local economy, as any fishery needing to use these waters can be accommodated by the two other man-made islands approximately 5 miles to the north and the attached 15 miles of bridge trestle which are not covered with construction equipment, and therefore will not

be covered by these safety zones.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security

Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of safety zones to protect the public from hazards created by ongoing construction work. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the

Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2021-0915 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;  
Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0915 to read as follows:

**§ 165.T05-0915 Safety Zones; Chesapeake Bay Bridge Tunnel, Chesapeake Bay Entrance, VA.**

(a) *Location.* The following areas are safety zones:

(1) Any waters located within 500 feet in all directions from the edge of South Thimble Island. South Thimble Island is located approximately 3.3 miles north of the shores of Virginia Beach on Highway 13, also known as the Chesapeake Bay Bridge Tunnel (CBBT).

(2) Any waters located within 500 feet in all directions from the edge of North Thimble Island. North Thimble Island is located approximately 4.5 miles north of Virginia Beach on Highway 13.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zones. The term also includes an employee or contractor of Chesapeake Tunnel Joint Venture (CTJV) for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through these safety zones, or to notify vessels and individuals that they have entered a safety zone and are required to depart immediately.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (a) of this section unless authorized by the COTP, or designated representative. If a vessel or person is notified by the COTP, or designated representative that they have entered one of these safety zones without permission, they are required to immediately



depart in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zones must first contact the CTJV designated representatives, CTJV Marine General Superintendant by phone at 361-244-8852, CTJV Safety Director at 702-415-8600, or CTJV Construction Manager at 757-782-7741. CTJV will be monitoring VHF-FM channels 13 and 16 while work is ongoing. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, or designated representative to the mariner regarding the conditions of entry to and exit from any location within the fixed safety zones.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, state, county, or municipal law enforcement agency.

(e) *Enforcement period.* This section will be enforced until January 31, 2027, unless cancelled sooner by the COTP.

**Dated:** April 04, 2022.

**Samson C. Stevens,**  
*Captain, U.S. Coast Guard,*  
*Captain of the Port Sector Virginia.*

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